



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 20, 1998

Mr. Saul Pedregon
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR98-1268

Dear Mr. Pedregon:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115586.

The Dallas Police Department (the "department") received a request for the complete file relating to an incident on October 26, 1997. You contend that the requested documents are excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Initially, we note that the submitted documents include an autopsy report that is public by statute. The Open Records Act's exceptions do not, as a general rule, apply to information made public by other statutes. Open Records Decision No. 525 (1989). Section 11, article 49.25 of the Code of Criminal Procedure provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. Such records shall be public records.

Code Crim. Proc. art. 49.25, § 11. Pursuant to section 11, the autopsy report is a public record and must be released to the requestor.

The submitted documents also include a custodial death report. This office has concluded that Part I of a custodial death report is public information in accordance with article 49.18(b) of the Code of Criminal Procedure. *See* Open Records Decision No. 521 (1989). Parts II through V of the report are not public information. *See id.* The department must release Part I of the custodial death report.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal regulations prohibit the release of criminal history record information ("CHRI") maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 of the Government Code provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). The submitted documents include CHRI that is excepted from disclosure pursuant to section 552.101. The department must withhold this information from disclosure.

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." You state that the requested documents relate to a pending criminal investigation. Based upon this representation, we conclude that the release of these documents would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. You may withhold the remaining information from disclosure under section 552.108(a)(1).¹

¹We note that section 552.103 generally may not be invoked to except front page offense report information from disclosure. *See* Open Records Decision No. 597 (1991). Because we are able to resolve this matter under section 552.108, we do not address your section 552.103 claim at this time.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Karen Hattaway", written over a horizontal line.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 115586

Enclosures: Submitted documents

cc: Ms. Carol Lawless
IAS Claims Services
7524 Mosier View Court #108
Fort Worth, Texas 76118
(w/o enclosures)